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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH EUGENE FRAZIER,

Defendant and Appellant.

E047360

(Super.Ct.No. FNE003701)

OPINION

APPEAL from the Superior Court of San Bernardino County. Joseph R. Brisco,
Judge. Affirmed.

Scott Weis, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

I

FACTUAL AND PROCEDURAL HISTORY

On February 21, 2003, the San Bernardino Sheriff's Department received a call reporting a suspected case of spousal abuse. On arrival at the scene, a sheriff's deputy found the wife of defendant and appellant, Kenneth Frazier, being treated by paramedics. The deputy interviewed the wife and another witness; they informed the deputy that defendant had attacked both of them with a baseball bat.

On April 7, 2003, the People filed an information charging defendant with seven felony counts: (1) four separate counts of assault with a deadly weapon by means likely to produce great bodily harm, in violation of Penal Code¹ section 245, subdivision (a)(1); (2) two counts of criminal threats, in violation of section 422; and (3) one count of corporal injury to spouse/cohabitant/child's parents, in violation of section 273.5, subdivision (a).

On June 10, 2003, defendant entered a plea of nolo contendere on count 1, assault with a deadly weapon by means likely to produce great bodily harm, in violation of section 245, subdivision (a)(1). On July 29, 2003, the trial court sentenced defendant to the lower term of two years. The trial court dismissed the remaining counts.

The trial court suspended execution of the imposed prison sentence and granted felony probation for a period of four years, subject to terms and conditions, including in relevant part:

¹ All statutory references are to the Penal Code unless otherwise specified.

“3. Report to the probation officer in person immediately upon release from custody and thereafter once every fourteen (14) days or as directed.

“4. Cooperate with the probation officer in a plan of rehabilitation and follow all reasonable directives of the probation officer.

“5. Seek and maintain gainful employment or attend school, and keep probation officer informed of place of employment or school.”

On February 2, 2005, the probation department filed a petition to revoke probation and to issue a bench warrant for defendant’s arrest. The petition alleged that defendant had violated terms 3, 4 and 5 of the 2003 probation order, as provided above.

On February 2, 2005, the trial court ordered the prior order of probation revoked for the purpose of maintaining jurisdiction, and issued a bench warrant for defendant’s arrest.

On June 1, 2007, defendant appeared for arraignment on violation of the 2003 probation order. Defendant denied the violations of the terms.

On July 12, 2007, a probation officer’s supplemental report was filed. The report noted that defendant was gainfully employed as a carpenter with the Housing Authority of the City of Los Angeles. The report also noted that, although defendant was inconsistent in maintaining contact with probation, there had been no new arrests or convictions. The report recommended that probation be revoked and reinstated with certain modification, including serving 365 days in San Bernardino County Jail with credit for actual time served of 162 days.

On July 31, 2007, the trial court held an evidentiary hearing pursuant to *People v. Vickers* (1972) 8 Cal.3d 451 (*Vickers*) on defendant's alleged violation of the 2003 probation order. Defense counsel stated that defendant and the People had reached an agreement regarding entry of a new probation order subject to certain terms and conditions. The trial court found defendant in violation of term 3 of the 2003 probation order, and ordered that probation be revoked and reinstated probation on the terms and conditions agreed to by the parties. One of these conditions was that the trial court resentence defendant from the previously imposed executed prison sentence of two years to an imposed but unexecuted prison sentence of four years. Moreover, term 24 of the 2007 probation order required defendant to serve 365 days in San Bernardino County jail, with 237 days credit for time served (actual and conduct credits), leaving a balance of 128 days, which defendant could serve via weekend work release program at the Glen Helen facility in San Bernardino.

At the hearing, however, defense counsel requested that the People permit defendant to have his probation supervised by Los Angeles County since defendant was residing and working in Los Angeles. The trial court replied that it had no preference as to where defendant had his probation supervised. The court, however, repeated that defendant had to initially report for the work release program at the Glen Helen facility in San Bernardino.

The trial court asked defendant if he understood the new terms and conditions; defendant confirmed that he understood. The minute order of July 31, 2007, confirmed the terms and conditions of the probation order.

On November 5, 2007, the trial court issued a minute order revoking probation for the purposes of maintaining jurisdiction and issued a bench warrant for defendant's arrest, alleging defendant violated term 24 of the 2007 probation order—failing to appear for jail time at the Glen Helen work release program.

On October 17, 2008, defendant appeared at an arraignment on the bench warrant for violating term 24; defendant denied the violation. On October 29, 2008, the trial court held a hearing on the alleged violation, and referred the matter to the probation department for preparation of a supplemental report. The probation officer's supplemental report indicated that defendant had reported for work release on August 10, 2007, but failed to show on October 1, 2007.

On December 16, 2008, the trial court held a *Vickers* hearing on defendant's alleged violation of the 2007 probation order. The trial court found that defendant had willfully violated term 24 of the 2007 probation order by failing to appear for jail time at the Glen Helen work release program. The trial court ordered probation revoked and executed the previously imposed but suspended prison term of four years.

Defendant appeals.

II

ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436, and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

III

DISPOSITION

The judgment is affirmed.

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/s/ McKinster
J.

We concur:

/s/ Ramirez
P.J.

/s/ Hollenhorst
J.